

**S.B.CIVIL WRIT PETITION NO.7374/2007
(Meena Sharma Vs. State of Rajasthan & ors.)**

Date of order : 19th November 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Nitin Trivedi, for the petitioner.

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BY THE COURT:

By way of this writ petition, the petitioner, working on the post of teacher seeks to question the order dated 05.10.2007 (Annex.1) whereby she has been transferred from Ganga Bal Vidyalaya, Bikaner to Government Upper Primary School, Bajju (Panchayat Samiti Kolayat), and the order dated 10.10.2007 (Annex.2) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing her appeal (No.2216/2007) against the said transfer order.

Learned counsel for the petitioner has strenuously argued that the impugned transfer order made by the State Government is wholly without jurisdiction and the Tribunal has erred in summarily rejecting the appeal without considering the substance of the submissions made on behalf of the petitioner. Learned counsel submitted that operation of Sub-section (8-A) of Section 89 of the Rajasthan Panchayati Raj Act, 1994 ('the Act of 1994') read with Rule 289 of the Rajasthan Panchayati

Raj Rules, 1996 ('the Rules of 1996') could only be in the manner that the posting by transfer of an employee is to be made by the Panchayat Samiti or Zila Parishad concerned; and the State Government could only lay down policy for such transfers. Learned counsel further submitted that Rule 289 (2) of the Rules of 1996 would be rendered redundant if in relation to any member in the service of Panchayati Raj institution, the State Government could make orders of posting by transfer too because such posting is to be made by Panchayat Samiti or Zila Parishad only on the recommendation of the District Establishment Committee. Learned counsel contended that the impugned order issued by the Deputy Secretary to the Government remains wholly without jurisdiction and deserves to be quashed.

Having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner, this Court is clearly of opinion that this writ petition remains bereft of substance and does not merit admission. No such case is made out where the impugned transfer order could be considered violating any statutory requirement or suffering from want of authority.

The submissions in relation to the operation of the statute as suggested on behalf of the petitioner do not appear to be of correct interpretation of the plain words of the relevant

provisions; and do not make out a case of want of power and authority with the State Government to issue the transfer and posting order like the impugned one in relation to the petitioner whereby she has been transferred from one Panchayat Samiti to another.

Sub-section (8-A) of Section 89 of the Act of 1994 reads as under:-

“ Notwithstanding anything contained in Sub-sec. (8), the State Government may transfer any member of the service from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to a Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under Sub-sec. (8), or the rules thereunder.”

Rule 289 and 290 of the Rules of 1996 read as under:-

“Rule 289. Transfer within the district.-(1)
The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the district Establishment Committee by the Panchayat Samiti.

(2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or Zila Parishad concerned on the recommendation of the district Establishment Committee.

(3) State Government may issue orders regarding transfers from time to time. In case District Establishment Committee/Standing Committee of Panchayat Samiti does not agree, Chief Executive Officer/Vikas Adhikari as the case may be, shall carry out orders of the State Government.

(4) On transfer of the employee, his confidential roll and service record will be transmitted, without avoidable delay, to the Panchayat Samiti/Zila Parishad to whom his services have been transferred.

Rule 290. Transfer outside the district.- (1) The name of the employee desiring transfer or desired to be transferred from one district to another shall be communicated to the Director by the Panchayat Samiti or the Zila Parishad, as the case may be.

(2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or the Zila Parishad concerned on the recommendation of the State Government against the vacant posts existing at such time. The State Government may transfer any member of service from one Panchayat Samiti to another Panchayat Samiti within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under these rules. Chief Executive Officer or Vikas Adhikari concerned shall carry out such orders.

(3) On transfer of an employee, his confidential roll and service record will be transmitted without avoidable delay to the Panchayat Samiti/Zila Parishad to whom his services have been transferred."

(underlining supplied for emphasis)

Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any

member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too. The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such transfer is proposed to be made.

A look at the Rules aforesaid and the source of wide powers of the State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District. The submissions as made by learned counsel for the petitioner that the State Government could only lay down a policy and else posting by transfer is envisaged to be made only by Panchayat Samiti or Zila Parishad concerned by virtue of Rule 289(2) and further submission that if Rule 289(3) and

other provisions are read providing independent power to the State Government to issue orders of transfer, the same might render redundant Rule 289(2) is, in the considered opinion of this Court, not a correct reading of the said provisions nor a correct comprehension of their scheme.

As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. Contrary to the suggestion as made by the learned counsel, Sub-rule (3) of the Rule 289 not only operates to give effect to such powers of the State Government but makes them emphatically clear while providing that in case District Establishment Committee or Standing Committee does not agree, the Chief Executive Officer or Vikas Adhikari, as the case may be, should carry out the orders of the State Government. Similarly, Rule 290 of the Rules of 1996, though its Sub-rule (1) refers to the transfer outside a district, but incorporates the aforementioned powers of the State Government in the comprehensively framed Sub-rule (2) and again, Chief Executive Officer or Vikas Adhikari concerned is required to carry out the orders of transfer. The powers of the State Government being untrammelled and unaffected by any other power with any

other authority to issue transfer order, this Court is clearly of opinion that the transfer order of the present nature as issued by the State Government, transferring an employee from one Panchayat Samiti to another Panchayat Samiti, does not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement.

The Tribunal has not committed any error or illegality in rejecting the submissions as made in this case on behalf of the petitioner. There is no ground for interference.

The petition fails and is, therefore, rejected.

(DINESH MAHESHWARI),J.

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